

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

NCH CORPORATION, NATIONAL
CHEMSEARCH CORPORATION OF NEW
JERSEY, INC., AMERICAN ALLSAFE
CO., INC. d/b/a CERTIFIED
LABORATORIES OF NEW JERSEY,
INC., MOHAWK LABORATORIES OF
NEW JERSEY, INC., or as a
DIVISION OF NCH CORPORATION, FMC
CORPORATION and LISBETH HIGGINS,

Defendants.

CIVIL ACTION NO. 98-5268 (KSH)

UNITED STATES OF AMERICA,

Plaintiff,

v.

FMC CORPORATION, and
LISBETH HIGGINS,

Defendants.

CIVIL ACTION NO. 01-0476 (KSH)

CONSENT DECREE

240765



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In February 1991, the United States filed a complaint naming Princeton-Gamma Tech, Inc. ("PGT") as a defendant which sought reimbursement of response costs incurred and to be incurred by the United States relating to the release or threat of release of hazardous substances at the Montgomery Township Superfund Site and the Rocky Hill Municipal Wellfield Superfund Site, civil action number 91-809 (AET). The United States and PGT have reached a settlement relating to that case and are lodging a Consent Decree with the court. In connection with the settlement in that matter, the United States and PGT have reached a settlement relating to the Higgins Farm Superfund Site and the Higgins Disposal Superfund Site which are the subject of this Consent Decree. PGT is a third-party defendant in actions relating to each of those two Sites.

I. HIGGINS FARM SUPERFUND SITE BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), in 1998 filed a complaint in civil action number 98-5268 (KSH) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, as amended. In May 1999, the United States filed an amended complaint.

B. The United States in its amended complaint, naming NCH Corporation, FMC Corporation and Lisbeth Higgins as defendants, seeks: (1) reimbursement of response costs incurred by EPA and the Department of Justice for response actions at the Higgins Farm Superfund Site ("Higgins Farm"), in Franklin Township, Somerset County, New Jersey, together with accrued interest; and (2) a declaration of liability for future response costs.

C. On or about June 2, 2000, some of the defendants sued by the United States filed a third-party complaint. PGT is one of the third-party defendants named in the third-party complaint.

D. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed Higgins Farm on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, in March 1989.

E. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from Higgins Farm, EPA conducted a Remedial Investigation and Feasibility Study ("RI/FS") for Higgins Farm pursuant to 40 C.F.R. § 300.430 from 1990 until 1992.

F. On September 24, 1990, EPA issued a Record of Decision ("1990 ROD"). The 1990 ROD provided, as an interim remedy, the installation of an alternate water supply for certain residences. By May 1993, the alternate water supply had been installed.

G. On September 30, 1992, EPA issued a second Record of Decision for Higgins Farm ("1992 ROD") that documents EPA's selection of a permanent remedial action for Higgins Farm. The remedial action selected in the 1992 ROD provided for the design and construction of an on-site extraction and treatment system for contaminated ground water, with discharge of the treated ground water to an on-site surface water body.

H. The design and construction of the treatment plant occurred between February 1993 and May 1998. The treatment plant commenced operations at Higgins Farm in May 1998.

II. HIGGINS DISPOSAL SUPERFUND SITE BACKGROUND

I. On January 31, 2001, FMC Corporation filed a complaint seeking reimbursement for response actions it undertook at the Higgins Disposal Superfund Site. FMC's lawsuit is civil

action number 01-0476 (KSH). PGT is one of the defendants named in FMC Corporation's complaint.

J. The United States, on behalf of the EPA, in June 2001 filed a complaint pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, as amended, naming FMC and Lisbeth Higgins as defendants and seeking (1) reimbursement of response costs incurred by EPA and the Department of Justice for response actions at the Higgins Disposal Superfund Site ("Higgins Disposal"), in Kingston, Somerset County, New Jersey, together with accrued interest; and (2) a declaration of liability for future response costs. That lawsuit is civil action number 01-2946 (KSH).

K. During a scheduling conference on or about July 16, 2001, the court consolidated civil action numbers 01-476 (KSH) and 01-2946 (KSH). The controlling civil action number is 01-0476(KSH).

L. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed Higgins Disposal on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, in August 1990.

M. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from Higgins Disposal, EPA conducted a Remedial Investigation and Feasibility Study ("RI/FS") for Higgins Disposal pursuant to 40 C.F.R. § 300.430 from 1992 through 1996.

N. On September 20, 1997, EPA issued a Record of Decision ("1997 ROD") that documents EPA's selection of a remedial action for Higgins Disposal. The remedial action selected in the 1997 ROD has two components. The first component involves the installation of

an alternative water supply for the residents affected by the contaminated groundwater. The second component involves the construction of an on-site ground water extraction system and pipeline to transmit the contaminated groundwater to the Higgins Farm Superfund Site for treatment. By September 1999, the alternate water supply had been installed.

O. On December 9, 2002, EPA issued an Explanation of Significant Differences ("2002 ESD") for Higgins Disposal. Pursuant to the 2002 ESD, the second component of the remedial action selected in the 1997 ROD has been changed to the installation of an on-site ground water extraction and reinjection system.

P. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

III. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b) and also has personal jurisdiction over the Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

IV. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal

status including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

V. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- b. "Certification of Completion" shall mean EPA's certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that the remedial actions have been completed at the Sites in accordance with the requirements of the National Contingency Plan and the 1990 ROD, the 1992 ROD, the 1997 ROD and the 2002 ESD.
- c. "Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XVI).
- d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code 26 U.S.C. § 9507.

h. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States will incur for response actions at the Sites after the date of entry of this Consent Decree.

i. "Insurance Carriers" shall mean the following insurance carriers of Settling Defendant: Safety Mutual Insurance Company, Western World Insurance Company, Federal Insurance Company, North River Insurance Company, First State Insurance Company, Hartford Insurance Group, Hartford Fire Insurance Company, Hartford Accident & Indemnity, Penn America Insurance Company.

j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

l. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

- m. "Parties" shall mean the United States and the Settling Defendant.
- n. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has incurred for response actions at the Sites prior to the date of entry of the Consent Decree.
- o. "Plaintiff" shall mean the United States of America.
- p. "Remedial Action" shall mean the response actions at Higgins Farm set forth in the 1990 ROD and 1992 ROD, and the response actions at Higgins Disposal set forth in the 1997 ROD and the 2002 ESD.
- q. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- r. "Settling Defendant" shall mean Princeton Gamma-Tech, Inc.
- s. "Settling Related Parties" shall mean Outokumpu (USA), Inc.; Outokumpu Copper (USA), Inc.; Outokumpu Copper, Inc.; Outokumpu, Oy; Outokumpu Copper Products, Oy; and American Nuclear Systems.
- t. "Sites" shall mean the Higgins Farm Superfund Site, located on Route 518 in Franklin Township, Somerset County, New Jersey, and generally shown on the map attached as Appendix A, and the Higgins Disposal Superfund Site, located on Laurel Avenue, Kingston, Somerset County, New Jersey, and generally shown on the map attached as Appendix B, and all real property onto which or under which hazardous substances have migrated from these properties.
- u. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities on behalf of EPA.

VI. REIMBURSEMENT OF RESPONSE COSTS

4. Settling Defendant shall pay \$5,000,000 in reimbursement of Past and Future Response Costs. Settling Defendant is obtaining the proceeds for this settlement from settlements with its Insurance carriers. Within 3 days of the date of all parties' signature of this Consent Decree, Settling Defendant shall place into a Court Registry Account all monies received from insurance settlements or buy backs related to claims against the carriers and arising out of the government's claims against Settling Defendant for environmental responses at the Sites. With respect to the remaining amount due under this Decree, Settling Defendant shall place any amounts received from its Insurance Carriers into the Court Registry Account within 3 days of Settling Defendant's receipt of the funds from its Insurance Carriers, but no later than 45 days after all parties' signature of this Consent Decree. However, if PGT does not receive payment from one or more Insurance Carrier due to the bankruptcy, receivership, or insolvency of such Insurance Carrier, and is unable to make payment of the complete settlement amount into the Court Registry Account for this reason, PGT will be considered to be in compliance with its obligations under this Consent Decree, provided that, upon request by the United States or the State of New Jersey, PGT agrees to assign all of its rights under its settlement agreement with the defaulting insurance carrier to the United States and the State of New Jersey.

5. Within five days of receiving notice of entry of this Consent Decree, Settling Defendant shall file with the District Court a Proposed Order in the form attached as Appendix C, that directs the Clerk of the Court to cause the principal amount of \$5,000,000 paid into the Court Registry account plus all interest accrued on this amount, to be disbursed from the Court Registry Account to the United States in the manner described in the Proposed Order. In the

event this Consent Decree is not entered, Settling Defendant may apply to the Court for the return of the proceeds in the account, including interest, and the United States will not oppose the return of the proceeds from the Court Registry Account to the Settling Defendant.

6. Of the total settlement amount to be paid to the United States by Settling Defendant pursuant to this Consent Decree, \$3.5 million shall be deposited in the Higgins Farm Superfund Site Special Account and \$1.5 million shall be deposited in the Higgins Disposal Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Sites, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payment. In the event that the payment required by Section VII, Paragraph 9 (Stipulated Penalty) is not received when due, Interest shall accrue on the unpaid balance from the date such payments were due through the date of payment.

9. Stipulated Penalty

a. If Settling Defendant fails to make the payments to the Court Registry when due, or fails to file the Proposed Order when required to do so by Paragraph 4, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA as a stipulated penalty, in addition to the Interest due pursuant to Paragraph 8, the following amounts per violation per day:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 7 th days
\$2,000	8 th day and beyond

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of a penalty by EPA. All payments to the United States under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check(s) made payable to "EPA Hazardous Substance Superfund," and shall be remitted via Electronic Fund Transfer ("EFT"), along with the following information, to EPA's Account with Mellon Bank, Pittsburgh, Pennsylvania, as follows:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: **EPA**
- iii. Account code for Mellon Bank account receiving the payment: **9108544**
- iv. Mellon Bank Routing Number: **043000261**
- v. Name of Party making payment
- vi. EPA case Number: **98-5268-01-0476**
- vii. Site Spill Identifier Nos. **02-WF** (Higgins Farm) and **02-3C** (Higgins Disposal)

The check, or letter accompanying the check, shall reference the name and address of the party making payment, the Site names, the Site/Spill ID Numbers 02-WF (Higgins Farm) and 02-3C (Higgins Disposal), and EPA Region II and EPA Case Number 98-5268-01-0476.

c. At the time of each payment made pursuant to this Section, copies of check(s) submitted and any accompanying transmittal letter(s) shall be sent to the United States as provided in Section XIV (Notices and Submissions), and to Chief, Financial Management Branch, U.S. EPA Region II, 290 Broadway, 29th Floor, New York, NY 10007-1866.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due or the day a violation occurs and shall continue to accrue through the date of payment or the final day of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or actions available to the United States by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

12. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS NOT TO SUE BY PLAINTIFF

13. In consideration of the payment that will be made by the Settling Defendant under the terms of this Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant and Settling Related Parties pursuant to Sections 106 and

107(a) of CERCLA, 42 U.S.C. § 9606 and 9607(a) with regard to the Sites. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of the payment required by Paragraph 4 of Section V (Reimbursement of Response Costs), along with any applicable stipulated penalties accrued pursuant to Paragraph 9 of Section VII (Failure to Comply with Consent Decree). These covenants not to sue Settling Defendant and Settling Related Parties are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant and Settling Related Parties and do not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Plaintiff's Covenant Not to Sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Sites;
- c. liability for future disposal, discharge or unsatisfactory storage or containment of a hazardous substance, pollutant, or contaminant at the Sites;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability; and

f. liability for violations of federal or State law which occur during or after implementation of the Remedial Actions.

X. COVENANTS BY SETTLING DEFENDANT

15. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Sites or this Consent Decree including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 and 9613, relating to the Sites;

c. any claims arising out of response actions at or in connection with the Sites, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

d. any claims or causes of action under federal, state or local law against any department, agency or instrumentality of the United States.

16. Except as provided in Paragraph 18 and Paragraph 22, these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section VIII (Covenants Not to Sue by Plaintiff), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

17. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

18. Settling Defendant agrees not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Sites, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Sites against Settling Defendant.

XI. EFFECT OF SETTLEMENT / CONTRIBUTION PROTECTION

19. Except as provided in Paragraph 18, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 18, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

20. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant and Settling Related Parties are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs and Future Response Costs relating

to the Sites. The "matters addressed" in this Consent Decree do not include those response costs, response actions, cleanup and removal costs, remedial actions or natural resource damages as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

21. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify DOJ and EPA in writing within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify DOJ and EPA within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response or cleanup and removal costs, natural resource damages or other appropriate relief relating to the Sites, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenants Not to Sue by Plaintiff).

XII. ACCESS TO INFORMATION

23. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Sites.

24. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendant that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant assert such a privilege in lieu of providing documents, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to

the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

25. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Sites.

XIII. RETENTION OF RECORDS

26. Until ten years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Sites or the liability of any person under CERCLA with respect to the Sites, regardless of any corporate retention policy to the contrary.

27. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA and DOJ, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the

requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

28. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, in response to all information requests issued by EPA pursuant to Section 104(e) of CERCLA and all discovery requests pursuant to this litigation, it has :

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Sites, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Sites;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports or information relating to its potential liability regarding the Sites, since notification of potential liability or the filing of a suit against the Settling Defendant regarding the Sites; and

c. fully complied with any and all EPA requests for information regarding the Sites pursuant to Sections 104(e) and 122(e) of CERCLA; 42 U.S.C. §§ 9604(e) and 9622(e).

XIV. NOTICES AND SUBMISSIONS

29. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute

complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3- 1486/1 and 90-11-3-1486/2)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

ATTN: Higgins Farm and Higgins Disposal Superfund Site Attorney
U.S. Environmental Protection Agency-Region 2
Office of Regional Counsel
290 Broadway, 17th Floor
New York, New York 10007-1866

As to Settling Defendant:

Kalevi Onnela
President
Princeton Gamma-Tech, Inc.
1026 Route 518
Princeton, New Jersey 08540

Jeffrey Cohen, Esq.
Robertson, Freilich, Bruno & Cohen
One Riverfront Plaza, 4th Floor
Newark, NJ 07102

XV. RETENTION OF JURISDICTION

30. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

31. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a map of the Higgins Farm Superfund Site;

“Appendix B” is a map of the Higgins Disposal Superfund Site; and

"Appendix C" is the Proposed Order Regarding Disbursement of Funds from the Court Registry.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

32. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

33. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. EFFECTIVE DATE

34. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XIX. SIGNATORIES/SERVICE

35. The undersigned representatives for Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

36. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified them in writing that it no longer supports entry of the Consent Decree.

37. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby

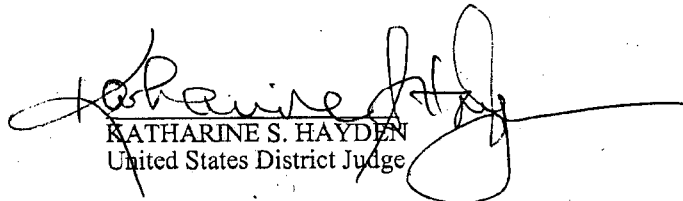
agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XX. FINAL JUDGMENT

38. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

39.. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 21st DAY OF Dec., 2001.


KATHARINE S. HAYDEN
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. NCH Corporation, et al., Civil Action No. 98-5268 (KSH) and United States v. FMC Corporation and Lisbeth Higgins, Civil Action No. 01-0476 (KSH) relating to the Higgins Disposal and Higgins Farm Superfund Sites.

Date: 12.24.03

FOR THE UNITED STATES OF AMERICA

Tom Sansonetti
THOMAS L. SANSONETTI
Assistant Attorney General
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Myles E. Flint, II
MYLES E. FLINT, II
Trial Attorney
Environmental Enforcement Section
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(202) 307-1859

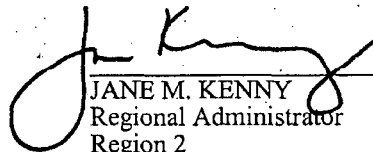
CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey

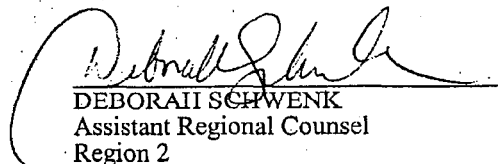
IRENE DOWDY
Assistant United States Attorney
District of New Jersey
420 East State Street
Trenton, New Jersey 08608

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Date: 3/9/04

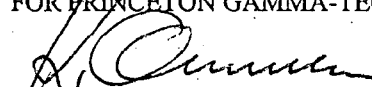
FOR U.S. ENVIRONMENTAL
PROTECTION AGENCY


JANE M. KENNY
Regional Administrator
Region 2
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007-1866


DEBORAH SCHWENK
Assistant Regional Counsel
Region 2
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007-1866

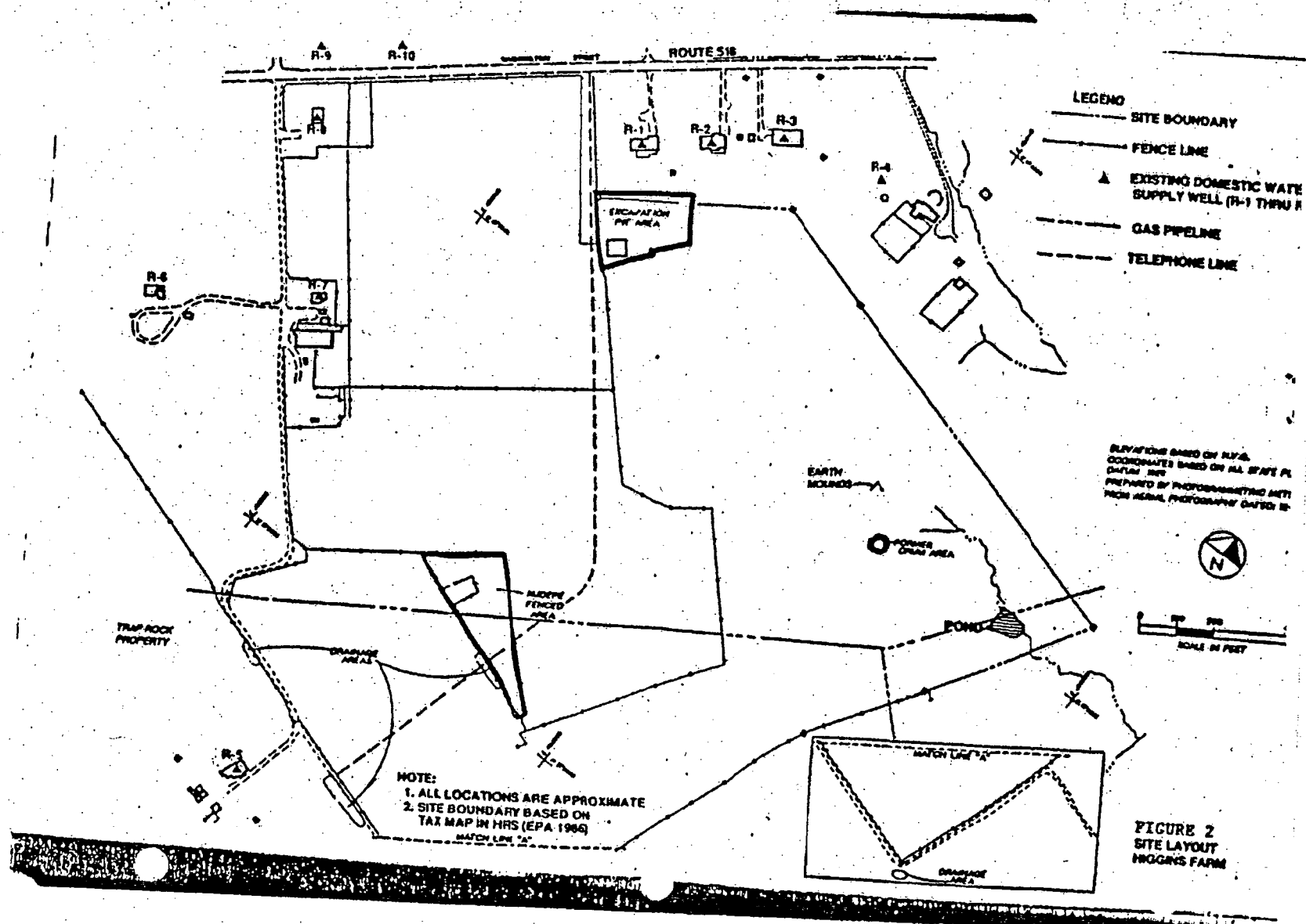
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FOR PRINCETON GAMMA-TECH, INC.

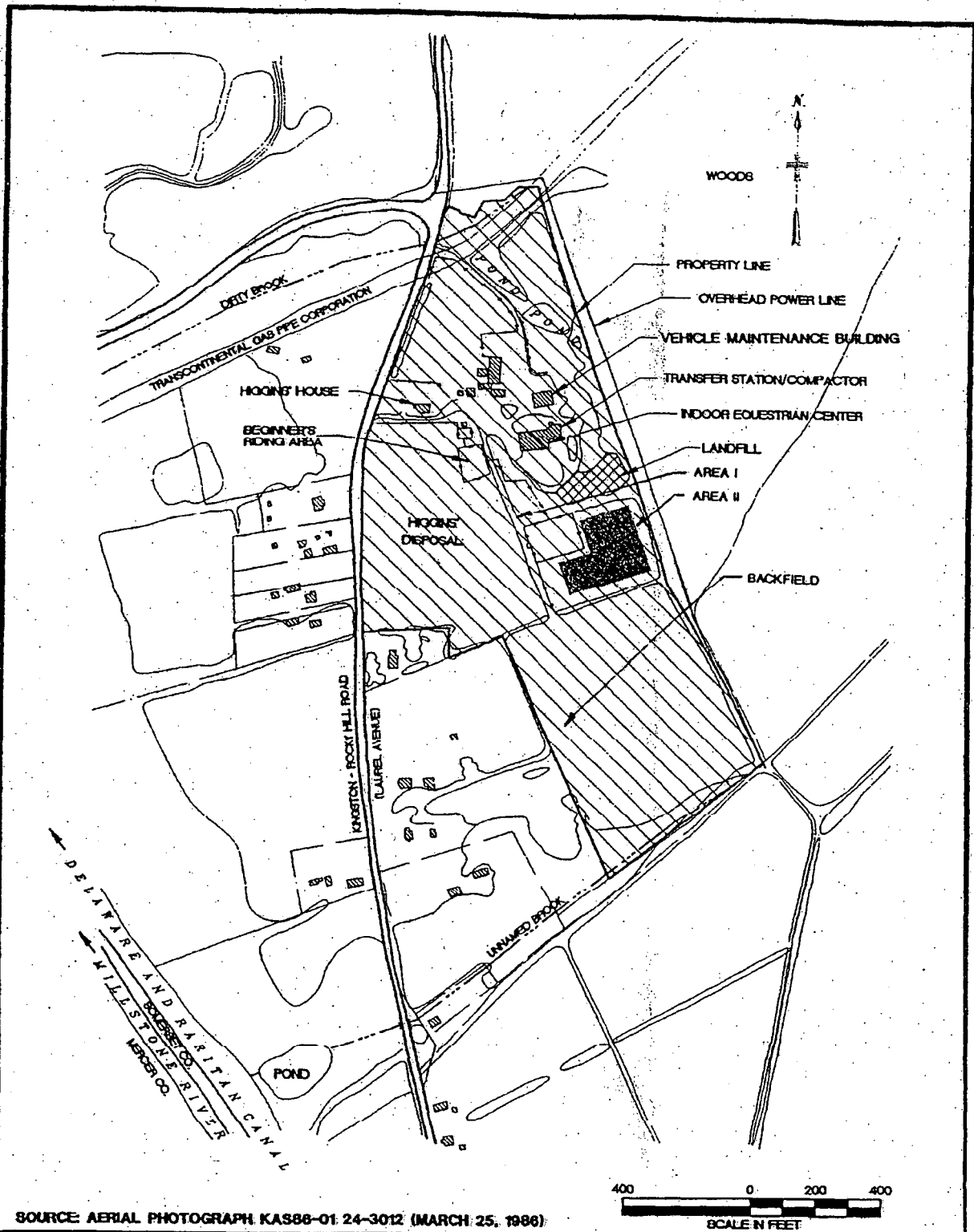


KALEVI ONNELA
President
Princeton Gamma-Tech, Inc.
1026 Route 518
Princeton, New Jersey 08540

ATTACHMENT A



ATTACHMENT B



**MALCOLM
PIRNIE**

HIGGINS DISPOSAL
KINGSTON, NEW JERSEY
HIGGINS DISPOSAL PLAN

MALCOLM PIRNIE, INC.

FIGURE 1-3

ATTACHMENT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

NCH CORPORATION, NATIONAL
CHEMSEARCH CORPORATION OF NEW
JERSEY, INC., AMERICAN ALLSAFE
CO., INC. d/b/a CERTIFIED
LABORATORIES OF NEW JERSEY,
INC., MOHAWK LABORATORIES OF
NEW JERSEY, INC., or as a
DIVISION OF NCH CORPORATION, FMC
CORPORATION and LISBETH HIGGINS,

Defendants.

CIVIL ACTION NO. 98-5268
(KSH)

UNITED STATES OF AMERICA,

Plaintiff,

v.

FMC CORPORATION, and
LISBETH HIGGINS,

Defendants.

CIVIL ACTION NO. 01-0476
(KSH)

PROPOSED ORDER REGARDING DISBURSEMENT OF FUNDS
FROM THE COURT REGISTRY

Upon application of the parties, it is hereby ORDERED, ADJUDGED and DECREED:

1. Pursuant to the Order of the Court dated _____, 2003 in this action, Defendant Princeton Gamma-Tech, Inc. paid the sum of \$5,000,000 into the Court Registry between _____, 2003 and _____ 2003.

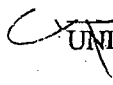
2. Pursuant to the _____, 2003 Order, the funds deposited by Princeton Gamma-Tech, Inc. were to be disbursed in accordance with the terms of a proposed Consent Decree to be lodged with this Court.

3. Pursuant to the terms of the Consent Decree, which was entered by the Court on _____, 2004, the Clerk of the Court shall disburse the funds Princeton Gamma-Tech, Inc. deposited into the Court Registry, plus all accrued interest on this amount (without a deduction for the handling fee, as noted below) to the United States of America. The check should bear the name and Civil Action No. of this matter, and USAO File No. _____, and should be forwarded to:

United States Attorney's Office
District of New Jersey
402 E. State Street, Room 502
Trenton, New Jersey 08608

4. The miscellaneous fee for handling of the funds in the registry of the Court shall not be deducted from the payments referenced in Paragraph 3, above, because the funds are being handled on behalf of the United States, in accordance with the notes to 28 U.S.C. § 1914 and 55 Fed. Reg. 42867.

SO ORDERED this _____ day of _____ 2004

 UNITED STATES DISTRICT JUDGE

U.S. District Court
District of New Jersey [LIVE] (Newark)
CIVIL DOCKET FOR CASE #: 2:98-cv-05268-KSH-MF

USA v. NCH CORPORATION, et al
Assigned to: Judge Katharine S. Hayden
Referred to: Magistrate Judge Mark Falk
Demand: \$0
Cause: 42:9607 Real Property Tort to Land

Date Filed: 11/20/1998
Jury Demand: None
Nature of Suit: 893 Environmental Matters
Jurisdiction: U.S. Government
Plaintiff

Date Filed	#	Docket Text
12/15/2004		Minute Entry for proceedings held before Judge Mark Falk : Status Conference held on 12/15/2004. (mm,) (Entered: 12/25/2004)
12/17/2004	<u>215</u>	Letter from United States seeking entry of Consent Decree with Princeton Gamma-Tech, Inc. lodged with the Court on March 30, 2004.. (Attachments: # <u>1</u> # <u>2</u>)(FLINT, MYLES) Modified on 12/17/2004 (RG,). (Entered: 12/17/2004)
12/27/2004	<u>216</u>	CONSENT DECREE ..Signed by Judge Katharine S. Hayden on 12/21/04. (nr,) (Entered: 12/28/2004)